



**BOARD OF COUNTY COMMISSIONERS'
(BOCC) CONCURRENCE FORM**

This form must be completed for all staff reports being prepared for BOCC meetings/public hearings and is the cover sheet for the staff report. The original (single-sided) staff report needs to be submitted to the County Manager's Office one (1) week in advance of the scheduled presentation date. For Closed Sessions please submit the original (single-sided) and 8 (double-sided copies) of the staff report.

To: Office of the County Manager

From (Name & Division): Kevin Demosky, Director, DUSWM **Phone #:** (301) 600-2997

Requested Meeting Date (mm/dd/yr): 02/21/13 **Est. Presentation Time:** 5 minutes

Staff Report Topic:

(The text provided here will also be reflected on the meeting agenda and county's website.)

Memorandum of Understanding (Eaglehead - Aspen North Water and Sewer Easement Maintenance
Requirements)

County Funds Requested/Required: \$NA

Type of Meeting:

(Click to place a check mark in the following appropriate boxes.)

☒ **Administrative Business** *(The Consent Agenda Committee determines which items are eligible for the consent agenda.)*

☐ **Worksession** ☐ **Closed Session** ☐ **Public Hearing (a.m. ☐ or p.m. ☐)**

☐ **BOCC/BOE Mtg.** ☐ **County/Municipalities Mtg.**

☐ **Power Point Presentation**

Board Action Desired: ☒ **Decision** ☐ **Guidance** ☐ **Information**

Staff Report Review:

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below :

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(Page 2)</u>
<input checked="" type="checkbox"/> Budget Officer	<u>mk</u>	<u>2/12/13</u>	<u></u>
<input checked="" type="checkbox"/> Finance Director	<u>GW</u>	<u>2/18/13</u>	<u>N</u>
<input checked="" type="checkbox"/> County Attorney's Office	<u>Kxm</u>	<u>2/12/13</u>	<u>N</u>
<input checked="" type="checkbox"/> County Manager	<u>ld</u>	<u>2/12/13</u>	<u>N</u>

Other Reviewing Divisions/Agencies:

(Click to place a check mark in the following appropriate spaces.)

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Animal Control			
<input type="checkbox"/> Business Development & Retention			
<input type="checkbox"/> Citizens Services			
<input type="checkbox"/> Community Development			
<input type="checkbox"/> Emergency Management			
<input type="checkbox"/> Fire & Rescue Services			
<input type="checkbox"/> Health Services			
<input type="checkbox"/> Human Resources			
<input type="checkbox"/> Interagency Information Technologies			
<input type="checkbox"/> Internal Audit			
<input type="checkbox"/> Parks & Recreation			
<input type="checkbox"/> Public Works			
<input type="checkbox"/> Transit Services			
<input checked="" type="checkbox"/> Utilities & Solid Waste Management	See Memo		
Other: _____			
Other: _____			
Other: _____			

Elected Officials or Independent Agencies:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Board of Education			
<input type="checkbox"/> Board of Elections			
<input type="checkbox"/> Board of License Commissioners			
<input type="checkbox"/> Citizens Care & Rehabilitation Center/ Montevue Assisted Living			
<input type="checkbox"/> Frederick Community College			
<input type="checkbox"/> Frederick County Public Libraries			
<input type="checkbox"/> Sheriff's Office			
<input type="checkbox"/> Social Services			
<input type="checkbox"/> State's Attorney's Office			

Comments:

1. From: _____ Date: _____

2. From: _____ Date: _____

3. From: _____ Date: _____

4. From: _____ Date: _____

5. From: _____ Date: _____



FREDERICK COUNTY GOVERNMENT
DIVISION OF UTILITIES AND SOLID WASTE MANAGEMENT

Kevin L. Demosky, Director

4520 Metropolitan Court
Frederick, Maryland 21704

www.FrederickCountyMD.gov

O: 301-600-2997 F: 301-600-2180

Commissioners

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve
David P. Gray
Kirby Delauter

Lori L. Depies, CPA
County Manager

February 12, 2013

EXECUTIVE SUMMARY

Memorandum of Understanding (Eaglehead - Aspen North Water and Sewer Easement Maintenance Requirements)

ISSUE: Should the BOCC execute a Memorandum of Understanding (MOU) with the Lake Linganore Association (LLA) in connection with additional costs related to repairs involving water and sewer within areas where pervious or porous pavement is planned to be installed?

BACKGROUND: The LLA is a nonprofit corporation and fee simple owner of the streets, roads and rights of way for the roads in all platted, approved subdivision sections within the Lake Linganore PUD. The Eaglehead Community Preservation Corporation (ECPC) is a Maryland 501(c)(3) nonprofit corporation which is coordinating and advancing the design, funding and construction of the roads and infrastructure improvements for individual lot owners' construction within the Eaglehead - Aspen North Section (Aspen North).

ECPC has designed the infrastructure improvements that are required to obtain approvals to begin construction of public improvements in Aspen North. In order to meet the stormwater management (SWM) requirements in Aspen North within the available right-of-way, ECPC intends to use porous or permeable pavement in certain areas. Although ECPC is coordinating the infrastructure efforts, because the roads ultimately are owned and maintained by the LLA, the LLA has agreed to enter into the attached MOU with the County in order to set forth the relative rights and responsibilities of the parties regarding the repair and/or maintenance activities within the areas of permeable or porous pavement.

DISCUSSION: The MOU provides that, when repair, maintenance or replacement of water and sewer, or SWM, infrastructure are necessary in the areas of permeable or porous pavement, the County will give reasonable advance notice to, and will cooperate with, the LLA to determine how these areas will be restored. The MOU also provides that the LLA will pay for the actual costs and expenses incurred by the County in repairing the permeable or porous pavement areas to the extent that those costs and expenses exceed those that would have been incurred by the County if the repairs were performed in accordance with the then-prevailing County standards for asphalt or similar repairs. The MOU is not intended to replace the standard easements required for water and sewer and SWM facilities, but these deeds of easement will reference the MOU.

RECOMMENDATION: Staff recommends BOCC approval authorizing the President of the BOCC to sign the attached MOU.

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FREDERICK COUNTY GOVERNMENT
DIVISION OF UTILITIES AND SOLID WASTE MANAGEMENT

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Lori L. Depies, CPA
County Manager

MEMORANDUM

TO: Board of County Commissioners (BOCC)

FROM: Kevin L. Demosky, Director, Division of Utilities and Solid Waste Management
(DUSWM) *[Signature]*

DATE: February 12, 2013

RE: Memorandum of Understanding (Eaglehead - Aspen North Water and Sewer
Easement Maintenance Requirements)

ISSUE: Should the BOCC execute the attached Memorandum of Understanding (MOU) with the Lake Linganore Association (LLA) in connection with additional costs related to repairs involving water and sewer within areas where pervious or porous pavement is planned to be installed?

BACKGROUND: The LLA is a nonprofit corporation and fee simple owner of the streets, roads and rights of way for the roads in all platted, approved subdivision sections within the Lake Linganore PUD. The Eaglehead Community Preservation Corporation (ECPC) is a Maryland 501(c)(3) nonprofit corporation which is coordinating and advancing the design, funding and construction of the roads and infrastructure improvements for individual lot owners' construction within the Eaglehead - Aspen North Section (Aspen North), in cooperation with LLA. The construction of the Aspen North roadways, water and sewer, etc., will be funded by proceeds from Frederick County, Maryland Special Obligations Bonds, approved and issued by the County. Repayment of the bond proceeds will occur by way of the creation of a "special taxing district" for those properties benefitting from the infrastructure improvements.

ECPC has designed the infrastructure improvements that are required to obtain approvals to begin construction of public improvements in Aspen North. In order to meet the stormwater management (SWM) requirements in Aspen North within the available right-of-way, ECPC intends to use porous or permeable pavement in certain areas.

ECPC and the LLA have recognized that the County may need to access the public water and sewer utilities located under the areas of permeable or porous pavement for maintenance, repair and/or replacement, and may need to access the private stormwater management

easement area(s) in order to correct any stormwater management problems or deficiencies. Although ECPC is coordinating the infrastructure efforts, because the roads ultimately are owned and maintained by the LLA, the LLA has agreed to enter into the attached MOU with the County in order to set forth the relative rights and responsibilities of the parties regarding the repair and/or maintenance activities within the areas of permeable or porous pavement, since the standards and materials for repair and/or maintenance activities within these areas differ from those typically used by the County, and may result in additional costs and expenses beyond those typically involved with standard County repair and maintenance procedures.

DISCUSSION: The MOU provides that, when repair, maintenance or replacement of water and sewer, or SWM, infrastructure are necessary in the areas of permeable or porous pavement, the County will give reasonable advance notice to, and will cooperate with, the LLA to determine how these areas will be restored, in order to hold the costs to the least amount feasibly necessary to provide safe and functional repairs.

The MOU also provides that the LLA will pay for the actual costs and expenses incurred by the County in repairing the permeable or porous pavement areas to the extent that those costs and expenses exceed those that would have been incurred by the County if the repairs were performed in accordance with the then-prevailing County standards for asphalt or similar repairs.

The MOU is not intended to replace the standard easements required for water and sewer and SWM facilities, but these deeds of easement will reference the MOU.

RECOMMENDATION: Staff recommends BOCC approval authorizing the President of the BOCC to sign the attached MOU.

Attachment:

- Memorandum of Understanding (Eaglehead - Aspen North Water and Sewer Easement Maintenance Requirements)

MEMORANDUM OF UNDERSTANDING

(Eaglehead - Aspen North Water and Sewer Easement Maintenance Requirements)

THIS MEMORANDUM OF UNDERSTANDING, sometimes called "MOU", is made, entered into and effective as of the ____ day of _____, 2013, by and between the **Lake Linganore Association, Inc.**, a Maryland corporation (hereinafter "LLA") and the **Board of County Commissioners of Frederick County, Maryland**, a body corporate and politic and political subdivision of the State of Maryland, hereinafter called "County".

WHEREAS, LLA is a nonprofit corporation and fee simple owner of the streets, roads and rights of way for said roads in all platted, approved subdivision sections existing within the Lake Linganore Planned Unit Development in Frederick County, Maryland (hereinafter, the "PUD"); and

WHEREAS, Eaglehead Community Preservation Corporation (hereinafter, "ECPC") is a Maryland 501(c)(3) nonprofit corporation formed to lessen the burdens of the government by coordinating and advancing the design, funding and construction of the roads and infrastructure improvements necessary for individual lot owners' construction of residential dwelling units within the Eaglehead - Aspen North Section (hereinafter, "Aspen North") of the PUD, all of which activities are being undertaken in cooperation with LLA.

WHEREAS, the parties hereto anticipate that actual construction of the Aspen North roadways and other related infrastructure will be funded by proceeds from Frederick County, Maryland Special Obligations Bonds, approved and issued by the County, and that the repayment of the bond proceeds will occur by way of the creation of a "special taxing district" and the corresponding collection of a special tax or levy on those residential building lots that are situated within Aspen North and thereby derive benefit from the infrastructure improvements (hereinafter, the "Lots").

WHEREAS, ECPC and LLA have coordinated with the County in designing the infrastructure improvements that are required in order for LLA and ECPC to secure the final approvals and entitlements from the County that are prerequisite to commencement of construction on the platted, but undeveloped, Lots in Aspen North; and

WHEREAS, ECPC and LLA intend to facilitate satisfaction of a portion of the stormwater management requirements associated with the future development activity in Aspen North by way of incorporating "porous" or "permeable" pavement (hereinafter, the "Specialized Surface"), specifically designed and utilized for the purpose of managing stormwater runoff, in specific areas of the private roadways that are internal to, and provide means of ingress, egress and access specifically within, Aspen North (hereinafter, the "Identified Areas"); and

WHEREAS, the Identified Areas are situated within the right of way areas owned by LLA and shown on Exhibit A, attached hereto and made a part hereof, and are intended to be further described in one or more "standard form" Stormwater Management Deed(s) of Easement and Maintenance Agreement(s), by and between LLA, as "Grantor", and the County, as "Grantee", as may be necessary to comply with the requirements of Chapter 1-15.2 of the Frederick County Code, including but not limited to granting the County access to the private stormwater management easement area(s) in order to correct any problems or deficiencies that may continue unabated following applicable notice from the County to the Grantors (the "SWM Easements"), all as more particularly described in the SWM Easement(s); and

WHEREAS, contemporaneously with the recordation of the requisite SWM Easements, LLA will execute and deliver Deed(s) of Easement for Water and Sanitary Sewer (the "Water and Sewer Easement(s)"), pursuant to which the County, as "Grantee", shall be granted easements through the Identified Areas for the installation and future maintenance, repair and/or replacement of water and sewer lines and related appurtenances necessary for the provision of public water and sewer service to the Lots, all as more particularly described in the Water and Sewer Easement(s); and

WHEREAS, the parties have recognized and agree that the County may, in the future, need to access the public water and sewer utilities situated under the private streets and/or roadways lying in the Identified Areas for the purposes of County maintenance, repair and/or replacement, and, similarly, may need access to the private stormwater management easement area(s) in order to correct any stormwater management problems or deficiencies that Grantors are required to correct, but fail to correct following requisite notice from the County; it being acknowledged and agreed by the parties that any such access may, from time to time, necessitate cutting, trenching, removal and/or other breach or disturbance of the Specialized Surface in the Identified Areas; and

WHEREAS, the parties have agreed to enter into this MOU in order to memorialize their understandings and agreements regarding the performance of repair and/or maintenance activities within the Identified Areas, it being acknowledged and agreed that the standards and materials for repair and/or maintenance activities within the Identified Areas may differ from those utilized by the County in the normal course, and may result in costs and expenses beyond those typically occasioned by otherwise standard County repair and maintenance procedures where the standards and materials required are, in fact, different from those customarily utilized at such time for standard asphalt and/or concrete repairs.

NOW THEREFORE, in consideration of the foregoing recitals, the parties wish to memorialize their good-faith collective agreement regarding the subject matter hereof.

I. RECITALS. The recitals set forth above are hereby incorporated into and made a part of this MOU.

II. AGREEMENT.

A. Except as otherwise modified by the terms and conditions of this MOU, the County covenants and agrees to exercise reasonable, good-faith efforts to commence and complete any repair or maintenance activities within the Identified Areas in substantial accordance with its standard protocols and customary procedures.

B. In the event the County is required or otherwise determines to commence repairs and/or maintenance within the Identified Areas, the County will exercise good-faith efforts to afford LLA reasonable advance notice, and, where reasonably possible, the parties shall cooperate in determining the manner in which any resultant disturbances to the Specialized Surface shall be restored; it being the intent of the parties hereto to hold "Additional Costs" (*as such term is hereinafter defined*) to the least feasible amount necessary to provide safe and functional repairs to the areas of Specialized Surface disturbed in any or each such instance; it being acknowledged and agreed that the procedures, materials, and costs associated with repairs of the Specialized Surface may result in Additional Costs.

Except as may be otherwise expressly agreed to in writing by the parties, absent gross or willful negligence on the part of the County, the County shall have no liability whatsoever for claims of any nature that may arise by reason of the County's repair or restoration of areas of Specialized Surface, including, in particular, and without limitation, instances where the standards and materials employed for such repairs or restoration are not those customarily employed by the County, but rather, are requested, directed by, or otherwise determined in cooperation with, LLA pursuant to this MOU.

Notwithstanding any of the foregoing to the contrary, in no event shall the County be required to unreasonably delay any necessary repair and/or maintenance activity, and, where by reason of bona-fide emergency or other circumstances which, in the County's sole but reasonable opinion, renders cooperation with LLA impossible or impractical, the County may determine to proceed with the repair and/or maintenance activity within the Identified Areas, and make temporary or permanent repairs to any area(s) of the Specialized Surface that are disturbed utilizing those standards and materials then customarily employed by the County (*e.g.*, typical asphalt or concrete repairs).

C. It is the parties' intent that all "Additional Costs" reasonably incurred by the County in connection with any maintenance and/or repair activities performed within the Identified Areas shall be promptly reimbursed by LLA upon receipt of a reasonably detailed invoice evidencing the scope of work performed and the Additional Costs incurred, but in no event later than sixty (60) days following the County's issuance thereof. If reimbursement of the Additional Costs has not been received within the foregoing sixty (60)-day period, the County may pursue any and all rights afforded under the SWM Easement(s) and/or Water and Sewer Easement(s) and applicable law, including but not limited to adding the amounts due to the tax bills for property owned by LLA. For the purposes hereof, the term "Additional Costs" shall mean the actual costs and expenses incurred by the County in repairing the Specialized

Surface following County maintenance and/or repair activities within the Identified Areas, which costs and expenses are in excess of the actual costs and expenses that would have been incurred by the County if the repairs were performed in accordance with the then-prevailing County standards and/or protocols typical for asphalt roadways, concrete roadways or other like-repairs.

D. LLA acknowledges and agrees that the County has entered into this MOU as an accommodation to LLA and ECPC in order to facilitate the planned infrastructure for Aspen North, and, except for its covenant to employ good-faith efforts to cooperate relative to future repair and maintenance activities in the Identified Areas, the County shall have no further rights, obligations or liabilities beyond those which may otherwise be expressly provided for in the SWM Easement(s) and/or Water and Sewer Easement(s) executed and recorded.

E. Each of the parties hereto acknowledge and agree that this MOU is not intended as a complete and final agreement governing the subject matter hereof, but rather, one or more clarifying documents and/or amendments to either this MOU or the SWM Easement(s) and/or Water and Sewer Easement(s) recorded for the Identified Areas may be entered into by and among the parties hereto as may in the future be necessary and/or appropriate to adapt to changing standards and procedures in the industry, and the County's potential adoption of standard or routine protocols and unit costs for the repair of Specialized Surfaces.

III. GENERAL.

A. The parties hereto agree at all times to cooperate with each other in good-faith as may be reasonably necessary to accomplish the goals and intent of this MOU.

B. The parties agree and affirm that the persons executing this MOU on their respective behalf are authorized and empowered to act on behalf of the respective parties. The parties hereby further warrant and affirm that no cause of action challenging the existence, scope of validity of this MOU shall lie on the grounds that the persons signing on behalf of the respective parties were neither authorized or empowered to do so.

C. This MOU is intended as an agreement between the parties solely with respect to any maintenance and repair activities performed by the County within the Identified Area(s). This MOU is not in any way intended to relieve LLA or the County of compliance with any other obligations and/or requirements established by easements of record for existing and future development within the PUD.

D. This MOU shall inure to and be binding upon the parties hereto, their agents, successors, and assigns, and the rights, obligations and liabilities of the parties hereto shall be determined in accordance with applicable Frederick County regulations and Maryland law.

E. All notices, correspondences, invoices and other communications shall be addressed:

To County at:

Board of County Commissioners
of Frederick County, Maryland
12 E. Church Street
Frederick, Maryland 21701

with Copy to:

Kathy L. Mitchell, Esquire
Assistant County Attorney
30 N. Market Street
Frederick, Maryland 21701

To LLA at:

Lake Linganore Association, Inc.
c/o Current President
6718 Coldstream Drive
New Market, MD 21774

F. Except as may be otherwise expressly provided in this MOU, each of the County (except to the extent limited by law) and LLA shall indemnify, save harmless, and defend the other, their employees, agents and contractors, against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, which may be imposed upon the indemnified party by reason of any act by, on the part of, or attributable to the indemnifying party, its agents, contractors, subcontractors, or employees, occurring as a result of or arising out of such indemnifying party's acts or failure to act pursuant to this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed effective the day and year first above written.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND**
a body corporate and politic

Lori L. Depies, CPA, County Manager

BY: _____ (SEAL)

Blaine R. Young, President

Date: _____

WITNESS:

**LAKE LINGANORE ASSOCIATION,
INC., a Maryland corporation**



BY: Hilary M. Moore (SEAL)

Name/Title: Pres. Hilary M. Moore

Date: 1/23/13

IDENTIFIED AREAS =

U.S. EQUIVALENT COORDINATE TABLE		
POINT	NORTHING	EASTING
832	876,503.2537	702,504.6878
1034	876,505.2210	702,817.2048
1037	876,088.7632	702,731.3587
1064	876,139.6472	702,188.3108

AREA TABULATION CHART

1. TOTAL NUMBER OF LOTS AND/OR PARCELS TO BE RECORDED:
A. BUILDINGS: 0
B. NON-BUILDABLE: 0
C. OPEN SPACE: 0
D. PRESERVATION PARCELS: 0
TOTAL AREA OF EASEMENT:
A. PART 1: 0.000 AC
B. PART 2: 0.000 AC
C. PART 3: 0.000 AC
D. PART 4: 0.000 AC
TOTAL AREA OF EASEMENT TO BE RECORDED: 0.000 AC



SURVEYOR'S CERTIFICATE

[illegible]

LAKE UNGARE ASSOCIATION
C/O ENGLEHEAD COMMUNITY PRESERVATION CORP.
3774 EDWARD LANE
PISCATAWAY, MARYLAND 20754

PARCEL "A" AND PARCEL "B"
EAGLEHEAD
ASPEN NORTH

P.B. 7, P.M. 8.85
TAX MAP 68 GRID 2, PARCELS 142 & 143
MT. PLEASANT ELECTION DISTRICT #13
FREDERICK COUNTY, MARYLAND
SCALE: 1"=100'

DRAWN BY: AGU

DATE: JANUARY 14, 2015

1000

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DATE: 01/11/2018

21257, D

10.

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